



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allfast Fastening Systems, Inc.

File: B-251315

Date: March 25, 1993

Alan R. Yuspeh, Esq., Jerone C. Cecelic, Esq., and Jeffrey Eisenstein, Esq., Howrey & Simon, for the protester. Bhikhaji M. Maneckji, Esq., for Textron, Inc.; and F.P. Luvisi for Huck International, Inc., interested parties. Robert L. Mercadante, Esq., Defense Logistics Agency, for the agency. Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, CAO, participated in the preparation of the decision.

DIGEST

Protester's contention that an agency's package approach to procuring 97 different types of rivets in 4 lots unduly restricts competition is sustained where: (1) the structure of the solicitation excludes the participation of the protester--who could offer 88 of the 97 rivets--but who cannot submit an offer to provide any 1 of the 4 lots of rivets because each lot contains at least 1 rivet listed in an administrative agreement in lieu of debarment between the agency and the protester; (2) the agency failed to provide any evidence that this particular grouping of rivets was necessary to meet its minimum needs; (3) excluding the protester has a significant effect on the level of competition for these rivets; and (4) the protester has shown that a minor adjustment to the allocation of rivets may save the agency even more money than the package approach in the current solicitation.

DECISION

Allfast Fastening Systems, Inc. protests any award under request for proposals (RFP) No. DLA500-92-R-0303, issued by the Defense Logistics Agency (DLA) for 97 different types of blind rivets. Allfast contends that the structure of this RFP unduly restricts competition by bundling 97 rivet types into 4 lots, each of which contains at least 1 rivet type. Allfast cannot provide as a result of a prior agreement with DLA.

We sustain the protest.

BACKGROUND

The Solicitation

On October 14, 1992, DLA issued the RFP seeking offers for a fixed-price, indefinite-quantity contract--for 1 base year with two 1-year options--for the agency's estimated requirements for 97 different types of blind rivets. Each rivet type was assigned a separate contract line item number (CLIN) from 0001 to 0097. The RFP divided the 97 CLINs into 4 lots and anticipated award of the CLINs by lot.¹ DLA stated that each lot was meant to represent a "family grouping" of rivets based on material, head style, and manufacturing base, and that the agency hoped to achieve lower prices as a result of the groupings.

Upon receipt of the RFP, Allfast noticed that each of the lots in the solicitation included at least one rivet for which Allfast was not allowed to submit a proposal because of a prior administrative agreement with DLA in lieu of debarment. Specifically, 9 of the 97 rivets included in the solicitation were enumerated in an agreement between Allfast and DLA as items Allfast would refrain from offering to the government for a 1-year period. Two of the 9 rivets were included among the 29 rivets in lot I; 3 were included among the 27 rivets in lot II; 3 were included among the 25 rivets in lot III; and 1 was included among the 16 rivets in lot IV.

The Administrative Agreement

The administrative agreement which precluded Allfast from offering 9 of the 97 types of rivets in this RFP was the ultimate resolution of an initial proposal by DLA to debar Allfast from receiving government contracts. On May 12, 1992, some 5 months before issuance of this RFP, DLA's Special Assistant for Contracting Integrity proposed Allfast for debarment after receiving a report from DLA's Defense Industrial Supply Center (DISC) in Philadelphia. The DISC report set forth a 27-month history of delinquent deliveries by Allfast of certain rivets, and explained that the delivery problems had created a severe shortage of the rivets. As a result, the DISC report requested that Allfast be debarred for 1 year based on its continued poor performance.

¹Lot I consists of CLINs 0001 through 0029; lot II consists of CLINs 0030 through 0056; lot III consists of CLINs 0057 through 0081; and lot IV consists of CLINs 0082 through 0097.

DLA's May 12 notice to Allfast invited the company to submit information and argument in opposition to the proposed debarment within 30 days. Allfast responded on June 11, providing evidence that it should be considered a responsible offeror. Its response also explained that its delivery problems were related to two types of rivets--referred to as the Monel AllMax Rivet and the Zero-Grip Aluminum AllMax Rivet--that Allfast developed (with the help of DISC's Advocate for Competition) to ensure that DISC would have a competitive alternative to procuring such items only from Textron, Inc., an interested party here.²

After reviewing Allfast's response, the debarring official concluded that an administrative agreement wherein Allfast would refrain from selling to the government only those rivets for which it had been delinquent would

"provide adequate assurance that Allfast's future dealings with the [g]overnment, if any, will be conducted with the high degree of honesty, integrity, and reliability required of a [g]overnment contractor and that suspension or debarment is not necessary at this time to protect the [g]overnment's interests."

To assist DLA in assuring that Allfast would refrain from offering the items for which it had delinquency problems, a list of the affected parts, by military part number, was appended to the administrative agreement before it was signed on June 26. Nine of the parts on that list are included in the instant RFP.

Events After Issuance of the RFP

On October 23, Allfast challenged the structure of the October 14 RFP in a letter to the Commander of DISC. In its letter, Allfast asked that DISC consider rearranging the allocation of rivets among the 4 lots in the RFP so that Allfast could offer to provide at least some of the 88 rivets which are not covered by the administrative agreement between Allfast and DLA.

²Allfast claims there are only four remaining manufacturers of aerospace rivets in the United States, while Textron claims that it and Allfast are the only effective competitors for DISC rivet procurements. According to Textron, the field of competitors is effectively limited to Textron and Allfast because the participation of Huck International, Inc. in these procurements has heretofore been minimal, while another potential offeror--just qualified to sell these items in late 1992--has yet to establish itself as a proven competitor.

On November 2, Allfast met with the Commander of DISC and other DISC representatives. During that meeting, Allfast requested that the agency consider moving a total of 4 of the 97 rivet types--3 from lot III and 1 from lot IV to lots I or II--so that 2 of the 4 lots in the RFP would be open to competition by Allfast. In the agency's November 3 written refusal to make any adjustment to the RFP, the agency defended its decision to group its purchases of rivets into lots and advised Allfast that any further request for changes to the lot grouping should be accompanied by "clear and convincing documentation that the value represented by [Allfast's request] is equal to or surpasses that already established." This protest followed.

DISCUSSION

Allfast's challenge to this total package procurement raises the issue of whether an agency must consider making minor adjustments to its bundling of purchases when a protester shows that the structure of the package reduces competition, and may cost the agency more money than the package will save because of the reduced competition. For the reasons set forth below, we find unreasonable DLA's refusal to adjust the allocation of rivets in this procurement.

The Competition in Contracting Act of 1984 (CICA) generally requires that solicitations permit full and open competition and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. 10 U.S.C. § 2301(a) (1988). Since procurements on a total package basis can restrict competition, we will object to such procurements where a total package does not appear to be necessary to satisfy the agency's minimum needs. Airport Markings of Am., Inc. et al., 69 Comp. Gen. 511 (1990), 90-1 CPD ¶ 543; Pacific NW Bell Tel. Co.; Mountain States Tel. Co., B-227850, Oct. 21, 1987, 87-2 CPD ¶ 379, aff'd, B-227850.2, Mar. 22, 1988, 88-1 CPD ¶ 294.

DLA's attempt to bundle its need for rivets over the next 3 years into one procurement represents, on its face, a sound effort at achieving savings. In preparing the RFP, DISC personnel sought input from industry--Textron and Huck--about how to structure the RFP to achieve manufacturing savings. These discussions led to a decision to establish procurement lots based on material, rivet head style, and likely manufacturer. DLA claims that industry representatives advised that the use of such lots would result in lower unit prices for the rivets.

Once the RFP was issued, Allfast requested that the agency review its allocation of rivets to lots in order to broaden competition. In its meeting with the DISC Commander prior

to filing this protest--and now in its protest to our Office--Allfast requested that the agency consider a readjustment to the allocation of rivets to lots in light of: (1) the adverse impact on competition of the current allocation; (2) the ease of making a minor adjustment to the RFP; and (3) the potential cost savings from making such an adjustment. Specifically, Allfast proposed that the agency shift 4 of the 97 rivet types that Allfast is precluded from offering to DLA from lots III and IV, to lots I and II.

DISC's response to this specific request is that the RFP contained "the best grouping of blind rivets for contracting purposes" and that the grouping "should not be disturbed to allow a particular contractor to enter the field which is already adequate." In addition, DLA makes a general reference to price and delivery considerations and suggests that "[i]n order to break apart the established groupings, we would need to be convinced that some other pattern would yield a more efficient, effective package."

To the extent DLA suggests that it need not be concerned about Allfast's participation in the procurement because there is already adequate competition, its position is not supported by the record. Our review indicates that continued competition for these items should be a matter of concern to DLA. As noted above, not only did Allfast state that there were but four remaining manufacturers of aerospace rivets in the United States, but even Textron--the former sole manufacturer of many of these items, and the company most likely to benefit from Allfast's exclusion--states that Allfast has been its only effective competition for DLA rivet procurements.

Moreover, DLA's contention avoids the question of whether the package is necessary to meet the agency's minimum needs. Airport Markings of Am., Inc. et al., supra. CICA requires that agencies obtain "full and open" competition, defined as all responsible sources, therefore, even though several offerors can respond to a solicitation, other responsible sources could have been excluded without justification, in violation of CICA. Id.; see EMSA Ltd. Partnership, B-237846, Mar. 23, 1990, 90-1 CPD ¶ 326.

In its comments on the agency report, Allfast points out that the estimated value of all four lots here is approximately \$3 million. If one assumes for the purpose of analysis that the four lots are of equal value, then Allfast's proposal to move four of the rivet types will permit the company to compete in approximately half of the procurement, or roughly \$1.5 million in rivet purchases. In addition, Allfast explains that its presence as a competitor to Textron in DLA rivet procurements has historically caused a 25 percent reduction in prices--regardless of whether

Allfast received the award.³ A savings of 25 percent on approximately \$1.5 million in rivet purchases translates to roughly \$375,000.

Allfast recognizes that its proposal could result in an increased price for the four individual rivet types. First, it estimates that since nearly 100 rivet types make up a package worth about \$3 million, each rivet type accounts for nearly \$30,000 of the contract total. Thus, the four rivet types Allfast seeks to have moved from lots III and IV conceivably represent \$120,000 of the total contract price. Allfast claims that even if the price of these four rivet types increased 25 percent (or \$30,000) as a result of the reallocation, the additional cost of \$30,000 is more than offset by the potential savings of \$375,000 from permitting Allfast to compete.

While we recognize that Allfast's computations are based on hypothesis and average rivet values, there is much logic in its argument. In addition to the savings Allfast estimates, increasing competition here could also lead to the continued potential for long-term savings by maintaining a viable base of competition for these rivets. On the other hand, DISC has failed to respond with any rationale for why the agency cannot make this or some similar adjustment to increase the limited competition available here. Since DLA's rationale for the structure of this procurement is largely based on the administrative and manufacturing savings generally associated with its package approach, and since Allfast has made an unrefuted showing that its proposed adjustment will significantly increase competition and will probably achieve even greater savings than the current structure, we find that DLA's refusal to make any adjustment to the allocation of rivets to lots in this procurement is unreasonable.

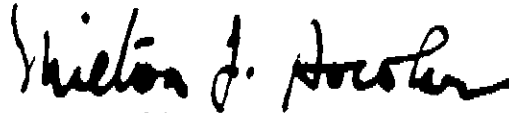
CONCLUSION AND RECOMMENDATION

Since we find that DLA failed to justify the necessity of the current grouping of rivet types in this procurement, we sustain Allfast's protest. We recommend that DLA either shift four of the rivet types in the RFP from lots III and IV, to lots I or II, as Allfast suggests; shift the four

³These claimed savings are well within the range of savings anticipated by Congress during consideration of CICA. Reports from the House and Senate committees considering CICA estimated the savings from competition at between 15 to 70 percent per procurement. See Committee on Governmental Affairs, Competition in Contracting Act of 1983, S. Rep. No. 50, 98th Cong., 1st Sess. 3; Committee on Government Operations, Competition in Contracting Act of 1984, H. Rep. No. 1157, 98th Cong., 2nd Sess. 14.

contested rivet types into a separate lot; or make some other adjustment to the structure of the procurement to ensure full and open competition. We also find that the protester is entitled to recover the costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d) (1992).

The protest is sustained.

for 
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